APPENDIX A

Thomas Ludlow Ashley
9th District, Ohio

Committees:
Banking and Currency
Merchant Marine and Fisheries

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C.

FOR A.M. RELEASE
Saturday, October 16, 1965

From the office of
U.S. REP THOMAS L. ASHLEY (D., Ohio)

CHAIRMAN OF THE HOUSE BANKING AND CURRENCY COMMITTEE ACCUSED BY REP. ASHLEY (D., OHIO) OF BLOCKING BANK MERGER BILL

U.S. Rep. Thomas Ludlow Ashley, (D., Ohio) today charged that the integrity and prestige of the House Committee on Banking and Currency have been threatened by the tactics of the Committee's Chairman, Wright Patman (D., Tex.) which Ashley said have "made a mockery of sincere efforts to develop responsible legislation relative to bank mergers." In a letter to Chairman Patman Rep. Ashley, a senior member on the Banking Committee, said that parliamentary procedure has been flaunted, the wishes of the majority of the Committee thwarted, and every dilatory and obstructionist tactic at Patman's command resorted to in his efforts to prevent the Committee from exercising its will on bank merger legislation prior to the adjournment of Congress.

Thomas Ludlow Ashley
9th District, Ohio

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Banking and Currency
Merchant Marine and Fisheries

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C.

October 15, 1965

Honorable Wright Patman
Chairman
Banking and Currency Committee
House of Representatives
Washington, D.C.

Dear Mr. Chairman:

I am deeply concerned, as are most of the members of the House Committee on Banking and Currency, over recent developments which go far beyond the bank merger legislation before us and which, indeed, threaten the integrity and prestige of the Committee on which we serve.

I believe a brief chronology of events will serve to bring this serious situation into clear focus and perspective.

On June 11, 1965, the Senate passed by voice vote S. 1698, a bill to establish a procedure for the review of proposed bank mergers.

On June 14, 1965, S. 1698 was referred to the Committee on Banking and Currency.

On July 19, 1965, 26 of the 33 members of the House Banking Committee, after being informed by the Committee staff that no hearings were contemplated, directed a letter to you asking that hearings on S. 1698 be scheduled promptly.

On August 3, 1965, you announced that the Domestic Finance Subcommittee, of which you are Chairman, rather than the Subcommittee on Bank Supervision and Insurance, would hold hearings commencing on August 11 on S. 1698 and related measures.

On August 11, 1965, you issued the first of many statements, accompanied by a press release on Committee letterhead, openly critical of the bank merger legislation before your Committee.

On September 13, 1965, after more than a month of hearings on S. 1698, I introduced H.R. 11011 and identical bills were offered on the same date by 18 other members of the House Committee on Banking and Currency.

On September 17, 1965, I directed a letter to you referring to a discussion earlier that day in which you indicated your willingness to respect the majority sentiments of the Committee with regard to concluding hearings on the bank merger legislation. I informed you that I had talked to 22 members of the Committee, each of whom expressed their judgment that the current hearings should be concluded no later than September 24, and that the Subcommittee on Domestic Finance report promptly thereafter to the full Committee i nno event later tha nSeptember 28.

On September 21, 1965, you replied that (1) the Subcommittee should continue to hold complete and extensive hearings on the bank merger bill and (2) that when the Subcommittee had done this and reported to the full Commitee, you would "at that point certainly yield to the desires of the majority of the full Committee in this matter."

On September 24, 1965, a letter was directed to you, as Chairman of th Banking Committee, from Attorney General Katzenbach expressing the views of the Department of Justice, the Department of the Treasury, the Comptroller of the Currency and the Federal Deposit Insurance

Corporation on the subject of bank merger legislation. Briefly stated, this letter expressed unanimous agreement among the above-mentioned departments and agencies that (1) past mergers should not be subject to the retroactive application of Section 1 of the Sherman Act or Section 7 of the Clayton Act and (2) that "the banking factors taken into account by the banking agencies under the Bank Merger Act of 1960 should also be taken into account by the Courts—the proposition which underlies H. R. 11011." Attorney General Katzenbach objected to forgiveness of past mergers already found by the Courts to be in violation of the anti-trust laws; the Comptroller of the Currency disagreed with the Attorney General; the Secretary of the Treasury and the Chairman of the FDIC stated that they believed the matter to be within the purview of the Department of Justice.

On September 27, 1965, you called Democratic members of the Banking Committee into caucus in an effort to reach agreement on a draft bill which you outlined to the members present. No mention was made of the contents of the Katzenbach letter which had been delivered by special messenger to the Banking and Currency Committee on September 25, 1965.

On September 29, 1965, 19 members of the Banking Committee directed a letter to you, pursuant to Section 25 of Rule XI of the Rules of the House of Representatives, requesting that, within 3 days, you call a special meeting of the Committee for the purpose of acting upon S. 1698 and related or similar bills.

On October 1, 1965, the Subcommittee on Domestic Finance met and reported by a 7-5 vote S. 1698, as amended, a bill which differed widely from the suggestions contained in the Katzenbach letter of September 24.

On October 1, 1965, you issued a Committee notice advising members that the full Committee would meet in

executive session on Tuesday, October 5, to consider S. 1698, as amended and reported to the full Committee.

On October 1, 1965, I sent to you and to each member of the Committee a copy of the substitute which I said I intended to offer, representing the position on bank merger legislation agreed upon by the Department of Justice, Department of the Treasury, Comptroller of the Currency and FDIC, with one exception—my substitute would validate all mergers occurring before the Philadelphia case was decided (June 17, 1963); others would be held to the criteria set forth in my original bill, H. R. 11011, and agreed upon by the above department and agency heads. As you know, with respect to validation of mergers prior to the Philadelphia case, this is essentially the same position taken by the Subcommittee bill.

On October 4, 1965, without prior notice to or approval of the Committee membership, you announced by press release that you would "insist" that the October 5 session be open to the public as a result of "arbitrary attempts by some Committee members to rush through legislation without adequate hearings." The release stated that the Ashley bill introduces "totally new standards" on bank mergers and that my bill "would virtually eliminate the application of the anti-trust laws to bank mergers." You were perfectly well aware, of course, that the standards contained in my bill are identical with those set forth in the Bank Merger Act of 1960 and you also knew that Attorney General Katzenbach had explicitly agreed that the Courts should consider the same standards as the banking agencies, including the anti-trust laws, in determining the validity of bank mergers. You also felt impelled to repeatedly impugn the motives of members who introduced H. R. 11011 and you even went so far as to charge that this constituted a "revolt against anti-trust laws" and "an attack upon the Kennedy-Johnson Administrations."

On October 5, 1965, you directed that the executive session called for in the Committee notice of October 1 be open to the press and public. When members pointed out that Sec. 25 of Rule XI of the Rules of the House of Representatives provides for a "special meeting of the Committee," and despite a Rule of both the House and our Committee that executive sessions shall be held in private except when the Committee by majority decision decides to admit the public, you insisted that it was within your prerogatives as Chairman to hold a public session. When appeal was sought to be taken from this ruling, you dismissed it summarily, again in clear violation of the Rules of Procedure by which the Committee is meant to operate. Instead, you insisted that a motion be made by members wishing to go from public session, where pursuant to the Rules of the House and Committee we never should have been, into closed session, where we should have been in the first place. Based upon your comments at the time, it is clear that these efforts were intended to cast members in disagreement with you in the worst possible light with the press. A reading of the transcript also reveals clearly that subsequent efforts to reach agreement on duration of debate were held to be not in order, again with no appeal from these erroneous decisions by the Chair.

On October 8, 1965, the Committee met, considered S. 1698 as amended, and then voted to recess until 10:00 Monday morning, October 11.

On October 11, 1965, consideration of S. 1698 as amended continued. At your urging, a motion was offered that the Committee recess to Thursday, October 14, because of Columbus Day (October 12) and to accommodate speaking engagements of the Chairman (October 13) but the motion was voted down. A preferential motion offered by Mr. Moorhead was then pending which would have recessed the Committee until Tuesday morning, October 12. However, when the House went into session at 12:00 Noon, the Moor-

head motion could not be voted upon. Despite your earlier protestations that the next session would be scheduled at the convenience of the Committee, you thereupon adjourned the session subject to the call of the Chair.

On October 11, 1965, because of your failure to set a time and date for the next session, a second letter was directed to you pursuant to Sec. 25 of Rule XI requesting that a date be set for continuing consideration of S. 1698 as amended.

On October 13, 1965, you returned from your speaking engagement in Texas. A session of the Committee could have been scheduled for Thursday, October 14, or Friday, October 15. Instead, you issued a press release, again without prior notice to or consultation with the Committee membership, advising that a session was scheduled for 9:30 A.M. Monday, October 18, to consider a $120 million authorization bill for the Small Business Administration, after which there would be further consideration of S. 1698 as amended and related bills.

This is the sorry story, step by step, that has made a mockery of sincere efforts to develop responsible legislation relative to bank mergers. Since the Senate bill was referred to your Committee on June 11, a majority of the Committee has been obliged to insist upon each and every legislative step that has been taken. From the time you acceded to the letter of September 29, signed by 19 members, requesting a special meeting for the purpose of acting upon S. 1698 as amended, you have permitted exactly 3 sessions to take place for this purpose. Time after time parliamentary procedure has been flaunted, the wishes of a majority of the Committee thwarted, and every dilatory and obstructionist tactic at your command resorted to in your efforts to prevent the Committee from exercising its will on bank merger legislation prior to the adjournment of Congress. The record speaks for itself

and it is a record of which no member of the Committee or, indeed, of the House can be proud.

Because the activities and conduct of the House Banking and Currency Committee are as much a matter of public concern as the Congress itself, I intend to release this letter to the press. I do so with very real reluctance and only in the hope that the scrutiny and judgment of the public may serve to bring about improvements in the legislative process which I believe to be absolutely essential.

Yours truly,

THOMAS LUDLOW ASHLEY, M. C.

APPENDIX B

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60-01-7

January 5, 1966

Honorable Henry S. Rouse
House of Representatives
Washington, D.C.

Dear Congressmen:

Confirming oral discussions between you and my staff, I am responding to your letter of October 20, 1965 in which you requested my comments and suggestions with respect to proposals offered by yourself and by Messrs. Ashley and Ottinger to achieve uniformity of standards to be followed by the banking agencies, the Department of Justice and the courts in reviewing bank mergers. Your letter and your subsequent assistance were very helpful to us in our further consideration of the matters involved in the proposed legislation. To meet the problems suggested by your letter and certain other difficulties, we have drafted the attached revision of subsections (5) and (7) of the Ashley-Ottinger bill. I believe that the proposed revision accurately states the standards which Congress, in the Bank Merger Act of 1960, directed the banking agencies to apply in passing on bank mergers. In amplifying in detail the position outlined in my letter of September 24, 1965, to the Chairman of the House Banking and Currency Committee, the proposed revision clarifies some of the possible ambiguities that that letter may have contained.

As you have pointed out in your letter, my letter of September 24, 1965, to Chairman Patman commented favorably on the objective of providing uniformity of standards for bank mergers; and, as I stated, I have no objection to making it clear by statute that the standards applied by the courts should be identical to those which the

banking agencies are directed to apply by the Bank Merger Act.

My views in this regard, however, as stated in my September 24, 1965 letter, stem from the premise that the appearance of conflicting standards is undesirable, particularly where it is felt by the industry to be a substantial problem, and not because of any belief that the standards specified in the Bank Merger Act and those applied by the courts are, in fact, significantly different. I should like to repeat here my strong belief that the differences, if any, in the standards applied to bank mergers by the courts and the standards applied by the agencies have been overstated. Therefore, it is vitally important in my view that any legislation aimed at achieving uniformity of standards should not, by inadvertent language, create entirely new and untested standards in this field. The analysis in your letter of October 20, 1965, illustrates, however, that it has been very difficult to draft statutory language creating uniform standards without also modifying existing law in undesirable ways.

For example, as you point out, the Ashley-Ottinger proposal could be reasonably interpreted to permit the regulatory agencies and courts to approve a merger that violates the Sherman Act. This would effect a substantial change in current law, for, as is clearly indicated by the legislative history of the Bank Merger Act, that Act was not intended to affect in any way the applicability of the Sherman Act to bank mergers.

Moreover, according to the Ashley report of October 19, 1965, the proposal "would change the present standards for the consideration of bank mergers" and would provide "in effect, that the general principle that substantially anticompetitive mergers are absolutely prohibited is to be modified in the case of banks to the extent that a 'merger transaction which tends to lessen competition may be approved where the probable adverse competitive effect

thereof is clearly outweighed in the public interest by the probable effect of such transaction in meeting the convenience and needs of the community to be served'." In thus permitting the single factor of "convenience and needs" to override all other considerations, the proposal goes far beyond the desirable objective of achieving uniformity in the review of bank mergers by means of a direction to the courts and agencies to take into account all of the standards of the Bank Merger Act, and does not accord with my view that a substantive change in existing law is neither necessary nor appropriate.

As you know, we also had some difficulties with your bill, again largely stemming from the fact that it incorporated novel tests that would create new uncertainities in this area of the law and might lead to a substantial modification of anti-trust principles, although this was clearly not your intent. I understand that my staff has reviewed the proposed revision of Subsections (5) and (7) of the Ashley-Ottinger bill which I am enclosing herewith, and that you are agreeable to the proposed revision.

I believe that the proposed revision does not conflict in any way with the views expressed by Secretary Fowler in his letter to you of January 3. In my opinion, the proposed revision accurately reflects the present law applicable to bank mergers, and with the exception which I shall shortly note. I would be agreeable to the Ashley-Ottinger bill if revised as indicated.

The exception concerns Section 2 (a) of the Ashley-Ottinger bill. For the reasons set forth in my testimony and in my letter of September 24, 1965, I remain opposed to this or any similar provision.

Sincerely,

ATTORNEY GENERAL

(Draft Revision of Subsections (5) and (7) of S. 1698, as amended in proposed bill filed by Congressmen Ashley and Ottinger)

1. Subsection (5) to read as follows: "The responsible agency shall not approve a proposed merger transaction unless it finds that such transaction will be in the public interest, taking into consideration the effect of the transaction on competition (including any tendency toward monopoly) and the importance of protecting the public against bank insolvency. In determining the effect on competition and the likelihood of insolvency, the agency shall take into account the following factors, among others:

(A) the financial history and condition of each of the banks involved

(B) the adequacy of their capital structure,

(C) their future earnings prospects,

(D) the general character of their management, and

(E) the convenience and needs of the communities to be served."

2. Subsection (7) to read as follows:

"(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consumated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review *de novo* the issues presented.

"(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the

Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

"(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction."